



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

JAY B. RISING  
STATE TREASURER

February 2005

The Department of Treasury has received various inquiries concerning whether authority exists for units of local government to pursue financial receivership. As summarized below, the answer is “no”.

- Pursuant to Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, the Governor may, after completion of the steps set out in the Act, declare a financial emergency to exist in a unit of local government. Those steps are summarized in the attachment.
- If a financial emergency is declared, the Governor assigns responsibility for managing the financial emergency to the Local Emergency Financial Assistance Loan Board, which consists of the State Treasurer, the Director of the Department of Management and Budget, and the Director of the Department of Labor and Economic Growth. In turn, the Board appoints an emergency financial manager to exercise authority under the Act for the purpose of resolving the financial emergency.
- While the authority conferred by the Act upon emergency financial managers may, in some respects, resemble the authority exercised by receivers, the two are not synonymous. Receivers generally are appointed and supervised by courts, as for example in bankruptcy proceedings, their purpose being to take custody of and preserve property placed in receivership. By contrast, the purpose of emergency financial managers, as noted above, is to exercise the authority conferred upon them by Act 72 to resolve financial emergencies in units of local government.
- Pursuant to Title 11 of the United States Bankruptcy Code, units of local government may seek protection as a debtor under Chapter 9 of the Code *only* if specifically authorized “by State law or by a governmental officer or organization empowered by State law.” In Michigan, the only such authorization is Section 22 of Act 72 which authorizes emergency financial managers to proceed under the Bankruptcy Code after giving notice to the Board, and unless the Board disapproves.
- Notice by an emergency financial manager must include a determination that no feasible financial plan can be adopted to resolve the financial emergency in a timely manner, or that an adopted financial plan already in effect for at least 180 days “cannot be implemented, as written or as it might be amended, in a manner that can satisfactorily resolve the financial emergency in a timely manner.”
- While emergency financial managers are authorized to *renegotiate* labor contracts, they are not authorized to abrogate such contracts, or other obligations. Therefore, the Act 72 process offers no safe harbor to units of local government seeking to avoid improvidently entered into obligations.

## **Attachment**

### **Summary of Local Government Fiscal Responsibility Act Process**

- Step One:** If one or more conditions indicative of a local government financial problem exist, the State Treasurer must conduct a preliminary review, after providing the unit of local government with specific written notification of the review and after meeting with officials from the unit of local government.
- Step Two:** The State Treasurer must inform the Governor within 30 days of commencement of the preliminary review whether or not a serious financial problem may exist.
- Step Three:** The Governor must appoint a review team if either of the following occurs:
- (a) The governing body of the local government, by resolution, requests assistance in meeting the ordinary needs of government.
  - (b) The State Treasurer informs the Governor that a preliminary review has been conducted and one or more conditions indicative of a serious financial problem may exist.
- A review team consists of the State Treasurer (or the State Treasurer's designee), the Auditor General (or the Auditor General's designee), a nominee of the Senate Majority Leader, a nominee of the Speaker of the House of Representatives, and any other State officials, or other persons with relevant professional experience selected by the Governor.
- Step Four:** Unless an earlier date is specified by the Governor, or the Governor grants a 30-day extension, the review team must report to the Governor within 60 days of its appointment and reach one of the following conclusions:
- (a) A serious financial problem does not exist in the local government.
  - (b) A serious financial problem exists in the local government, but a consent agreement containing a plan to resolve the problem has been adopted.
  - (c) A local government financial emergency exists because no satisfactory plan exists to resolve the serious financial problem.
- Step Five:** With 30 days after receipt of the review team report, the Governor must make one of the following determinations:
- (a) A serious financial problem does not exist in the local government.

(b) A serious financial problem exists in the local government, but a consent agreement containing a plan to resolve the problem has been adopted.

(c) A local government financial emergency exists because no satisfactory plan exists to resolve the serious financial problem.

Step Six: If the Governor determines that a local government financial emergency exists, the Governor must provide written notification to the chief administrative officer of the unit of local government who may request, within 10 days after receiving the notice, a hearing conducted by the Governor or the Governor's designee.

Step Seven: After the hearing or, if no hearing was requested, after expiration of the opportunity for a hearing, the Governor must either confirm or revokes the determination of a local government financial emergency.

Step Eight: A local government can appeal the Governor's determination to circuit court which may set aside the Governor's determination only if it finds that the determination is either:

(a) Not supported by competent, material, and substantial evidence on the whole record.

(b) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

Step Nine: If the Governor confirms the determination of a local government financial emergency, the Governor assigns responsibility for managing the local government financial emergency to the Local Emergency Financial Assistance Loan Board.

Step Ten: The Local Emergency Financial Assistance Loan Board must appoint an emergency financial manager, who serves at the pleasure of the Local Emergency Financial Assistance Loan Board.

Step Eleven: The emergency financial manager, in consultation with the unit of local government, must develop a written financial plan.

In addition to other powers granted to an emergency financial manager, and after notice to the Local Emergency Financial Assistance Loan Board, an emergency financial manager may authorize the unit of local government to proceed under federal bankruptcy provisions.

Step Twelve: The Governor may determine that the conditions for revoking a declaration of financial emergency have been met after receiving a recommendation from the Local Emergency Financial Assistance Loan Board.